

BellSouth Telecommunications, Inc.

Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
General Counsel-South Carolina

803 401 2900
Fax 803 254 1731

September 6, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

RECEIVED
2005 SEP -6 AM 10:11
SC PUBLIC SERVICE
COMMISSION

Re: Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting From Changes of Law
Docket No. 2004-316-C

Dear Mr. Terreni:

Enclosed for filing are the original and ten copies of the Response of BellSouth Telecommunications, Inc. to the Joint Petition for Rehearing or Reconsideration of Order No. 2005-247 in the above-referenced matter. By copy of this letter, BellSouth is serving this response on all parties of record to this docket.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
DM5 #600603

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

In Re:

Petition to Establish Generic Docket to
Consider Amendments to Interconnection
Agreements Resulting From Changes of Law

Docket No. 2004-316-0

RECEIVED
2005 SEP -6 AM 10:11
SC PUBLIC SERVICE
COMMISSION

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO THE JOINT PETITIONERS' PETITION FOR REHEARING OR
RECONSIDERATION OF ORDER NO. 2005-247**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this response to the *Petition for Rehearing or Reconsideration of Order No. 2005-247* ("Petition") that the Joint Petitioners filed on August 26, 2005. For the reasons set forth below, the Public Service Commission of South Carolina should deny the Petition.

The Petition does not allege any new facts, and it does not present any new arguments. To the contrary, it merely re-states arguments that already have been submitted to (and rejected by) the Commission and claims that the Commission erred when it established a deadline for ordering certain arrangements from BellSouth as UNEs at TELRIC prices prior to the completion of change of law proceedings.¹ This claim, however, clearly is misplaced. As

¹ See, e.g., Petition at ¶¶4-5, 7-9. While BellSouth believes this deadline should have been March 10, 2005 (and not June 8, 2005), the Commission acted properly in establishing this deadline prior to the completion of the change of law process. The Commission also made it clear that the extended deadline "is provided only for orderly negotiation and service transition purposes, and will be subject to true-up back to March 11, based on the new contractual arrangements negotiated by the parties." *Order* at 2-3. Consistent with the Commission's *Order*, BellSouth ceased accepting "new adds" in South Carolina on June 9, 2005. See Exhibit A (Carrier Notification Letters of June 1, 2005 and June 3, 2005) to the BellSouth's Response to the Petition for Rehearing or Reconsideration that ITC^DeltaCom previously filed in this docket.

discussed in detail in the Brief BellSouth filed in this docket on April 11, 2005, this aspect of the Commission's Order is consistent with the decision of the United States District Court for the Northern District of Georgia² and with the decisions of at least sixteen other State commissions. Moreover, after BellSouth filed that Brief, the Kentucky and Mississippi Commission Orders that were inconsistent with BellSouth's position (and that were discussed in BellSouth's Brief) have been enjoined by the federal courts in those states. This aspect of this Commission's Order is consistent with these two federal court decisions. Significantly, the Federal Communications Commission has done nothing whatsoever to suggest that this Commission, three federal courts, and numerous other State commissions have misread or misapplied the plain language of the *TRRO*.

In restating the Joint Petitioner's argument that this Commission's Order is inconsistent with the change of law provisions in certain interconnection agreements, the Petition relies heavily on Paragraph 233 of the FCC's *TRRO*.³ This argument is addressed in, and squarely refuted by, the Commission's Order. Specifically, the Order provides that

we agree with the New York Commission, which stated that "Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers are eliminated as of March 11, 2005." Thus, the right to assert contractual obligations must be read congruently with one of the overall goals of the *TRRO*, which was that certain classes of UNEs were no longer to be made available after March 11, 2005, at TELRIC prices.⁴

The Commission also held that "the FCC has the authority to make its [*TRRO*] order effective immediately regardless of the contents of particular interconnection agreements" and that "the

² Copies of the Georgia, Kentucky, and Mississippi federal court decisions referenced in this Response have been filed with the Commission as Exhibits to BellSouth's Response to the Petition for Rehearing or Reconsideration that ITC^DeltaCom previously filed in this docket.

³ See Petition at p. 2, ¶¶4-5.

⁴ Order at p. 5.

FCC may undo the effects of its own prior decisions, which have been vacated by the Federal Courts on several occasions.”⁵ These aspects of the Commission’s Order are well-founded in law and are consistent with the decisions of various federal courts and other State commissions.⁶

The Joint Petitioners also re-state their arguments that the Abeyance Agreement somehow exempts them from the Commission’s Order.⁷ The Commission fully and appropriately addressed these arguments in its Order, finding that “[t]he Abeyance Agreement simply provides that the parties will continue to operate under their current Commission-approved interconnection agreements until they move into a new agreement (either via negotiated agreement or via arbitration pursuant to a subsequent petition for arbitration of a new interconnection agreement).”⁸ As the Commission noted in its Order, “[t]he Agreement says nothing of changes of law that might be mandated by the FCC in the TRRO.”⁹ The Commission further noted that, in effect, the Joint Petitioners “argue that BellSouth essentially gave up the right to implement [the new rules the FCC adopted in its *TRRO*] for the current Agreement even before any party knew what those rules would contain.”¹⁰ The Commission correctly rejected this argument “because it impermissibly leads to unreasonable results.”¹¹ BellSouth respectfully submits that there is no reason for the Commission to revisit this well-reasoned and legally sound decision.

⁵ *Id.*

⁶ See Georgia Court Order at 5-6; Kentucky Court Order at 11-12; Mississippi Court Order at 12-16.

⁷ Petition at pp 3-4, ¶¶8-9.

⁸ Order at 9.

⁹ *Id.* BellSouth, therefore, submits that the parties are continuing to operate under their current interconnection agreements and, like every party to all other existing interconnection agreements, the Joint Petitioners are no longer permitted to order new adds as UNEs pursuant to their current interconnection agreements.

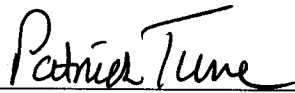
¹⁰ *Id.*

¹¹ *Id.*

CONCLUSION

For all of the reasons set forth above and in BellSouth's other submissions in this docket, the Commission should deny the Petition.¹²

Respectfully submitted,



Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
(803) 401-2900
BELLSOUTH TELECOMMUNICATIONS, INC.

599564

¹² Petitions for reconsideration or rehearing must be filed "within ten days after service of notice of the entry of the order or decision" See S.C. Code Ann. §58-9-1200; Commission Reg. 103-881.B. The Commission's Order was issued on August 1, 2005. The Joint Petitioners had actual notice of the Order beginning on or shortly after the date it was issued, *see* Petition, Exhibit 1, ¶¶2-5, and the Joint Petitioners were served with a copy of the Order on August 3, 2005. *Id.*, ¶8. To the extent this filing of the Petition was untimely and therefore would divest the Commission of subject matter jurisdiction to act on the Petition or would divest a reviewing court of subject matter jurisdiction to entertain any request by the Joint Petitioners to review any Commission Order in this proceeding, BellSouth expressly reserves its right to raise that issue in the future. See S.C. Code Ann. §58-9-1401 ("no cause of action shall accrue to vacate or set aside, either in whole or in part, any order of the Commission except an order on rehearing, unless a petition to the Commission for a rehearing has been filed and refused or deemed refused because of the Commission's failure to act thereon within twenty days."); *All Saints Parish v. Protestant Episcopal Church*, 595 S.E.2d 253, 269 (S.C. Ct. App. 2004)("Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.").

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Response of BellSouth Telecommunications, Inc. to the Joint Petitioners' Petition for Rehearing or Reconsideration of Order No. 2005-247 in Docket No. 2004-316-C to be served upon the following this September 6, 2005.

Florence P. Belser, Esquire
General Counsel
Post Office Box 11263
Columbia, South Carolina 29211
(Office of Regulatory Staff)
(U. S. Mail and Electronic Mail)

Jocelyn G. Boyd, Esquire
Staff Attorney
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

F. David Butler, Esquire
Senior Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U. S. Mail and Electronic Mail)

Joseph Melchers
Chief Counsel
S.C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U.S. Mail and Electronic Mail)

SC PUBLIC SERVICE
COMMISSION

2005 SEP - 6 AM 10:12

RECEIVED

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina 29211
(ITC^DeltaCom Communications, Inc.)
(CompSouth)
(U. S. Mail and Electronic Mail)

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(SCTC)
(U. S. Mail and Electronic Mail)

William Atkinson, Esquire
Attorney, State Regulatory
3065 Cumberland Circle
Mailstop GAATLD0602
Atlanta, Georgia 30339
(United Telephone Company of the Carolinas and
Sprint Communications Company, L.P.)
(U. S. Mail and Electronic Mail)

Russell B. Shetterly, Esquire
P. O. Box 8207
Columbia, South Carolina 29202
(Knology of Charleston and Knology of
South Carolina, Inc.)
(U. S. Mail and Electronic Mail)

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
1200 Main Street, 6th Floor
Post Office Box 12399
Columbia, South Carolina 29211
(MCI WorldCom Network Service, Inc.
MCI WorldCom Communications and
MCImetro Access Transmission Services, Inc.)
(U. S. Mail and Electronic Mail)

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(AT&T)
(U. S. Mail and Electronic Mail)

Marsha A. Ward, Esquire
Kennard B. Woods, Esquire
MCI WorldCom, Inc.
Law and Public Policy
6 Concourse Parkway, Suite 3200
Atlanta, Georgia 30328
(MCI)
(U. S. Mail and Electronic Mail)

Frank R. Ellerbe, Esquire
Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, South Carolina 29202
(South Carolina Cable Television Association)
(U. S. Mail and Electronic Mail)

Scott A. Elliott, Esquire
Elliott & Elliott
721 Olive Street
Columbia, South Carolina 29205
(Sprint/United Telephone)
(U. S. Mail and Electronic Mail)

Marty Bocock, Esquire
Director of Regulatory Affairs
1122 Lady Street, Suite 1050
Columbia, South Carolina 29201
(Sprint/United Telephone Company)
(U. S. Mail and Electronic Mail)

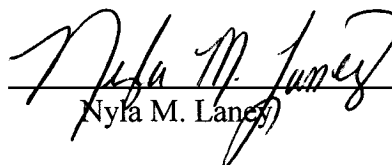
Bonnie D. Shealy, Esquire
Robinson McFadden & Moore, P. C.
1901 Main Street, Suite 1200
P. O. Box 944
Columbia, South Carolina 29202
(US LEC of South Carolina)
(U. S. Mail and Electronic Mail)

Andrew O. Isar
Director – State Affairs
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335
(ASCENT)
(U. S. Mail and Electronic Mail)

Nanette Edwards, Esquire
ITC^DeltaCom Communications, Inc.
4092 S. Memorial Parkway
Huntsville, Alabama 25802
(U. S. Mail and Electronic Mail)

Henry Campen, Esquire
Parker, Poe, Adams & Bernstein, L.L.P.
150 Fayetteville Street Mall, Suite 1400
Raleigh, North Carolina 27601
(US LEC of South Carolina)
(U. S. Mail and Electronic Mail)

Glenn S. Richards, Esquire
Shaw Pittman LLP
2300 N. Street, NW
Washington, DC 20037
(AmeriMex Communications Corp.)
(U. S. Mail and Electronic Mail)


Nyla M. Lane